

ORIGINAL

14 8/28/01

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF PENNSYLVANIA

FILED
HARRISBURG, PA

AUG 28 2001

JEROME SMITH,
Plaintiff

v.

UNITED STATES OF AMERICA,
Defendant

:
:
:
:
:
:
:

Civil No. 1:CV-01-14026

MARY E. D'ANDREA, CLERK

Deputy Clerk

(Judge Rambo)

(Magistrate Judge Smyser)

DEFENDANTS' MOTION TO DISMISS OR, IN THE ALTERNATIVE,
FOR SUMMARY JUDGMENT

Defendant, by and through undersigned legal counsel, moves this Court to dismiss the Complaint pursuant to Fed. R. Civ. P. 12(b) or, in the alternative, to grant summary judgment in its favor pursuant to Fed. R. Civ. P. 56(b). A brief in support of this Motion will be filed in accordance with M.D. Pa. Local Rule 7.5.

Counsel certifies that he has not sought the concurrence of plaintiff's attorney because plaintiff is a prisoner proceeding pro se. M.D. Pa. Local Rule 7.1.

Respectfully submitted,

MARTIN C. CARLSON
United States Attorney

Mark E. Morrison

MARK E. MORRISON
Assistant U.S. Attorney

ANITA L. LIGHTNER
Paralegal Specialist
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P.O. Box 11754
Harrisburg, PA 17108-1754
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Dated: August 28, 2001

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF PENNSYLVANIA

JEROME SMITH,	:
Plaintiff	:
	:
	: Civil No. 1:CV-01-1026
v.	:
	:
	: (Judge Rambo)
UNITED STATES OF AMERICA,	: (Magistrate Judge Smyser)
Defendant	:

CERTIFICATE OF SERVICE

The undersigned hereby certifies that she is an employee in the Office of the United States Attorney for the Middle District of Pennsylvania and is a person of such age and discretion to be competent to serve papers.

That this 28th day of August, 2001, she served a copy of the attached

DEFENDANTS' MOTION TO DISMISS OR, IN THE ALTERNATIVE,
FOR SUMMARY JUDGMENT

by placing said copy in a postpaid envelope addressed to the person hereinafter named, at the place and address stated below, which is the last known address, and by depositing said envelope and contents in the United States Mail at Harrisburg, Pennsylvania.

ADDRESSEE:

Jerome Smith
Reg. No. 19145-018
FPC Allenwood
P.O. Box 1000
Montgomery, PA 17752


ANITA L. LIGHTNER
Paralegal Specialist

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF PENNSYLVANIA

JEROME SMITH,	:
Plaintiff	:
	: Civil No. 1:CV-01-1026
v.	:
	: (Judge Rambo)
UNITED STATES OF AMERICA,	: (Magistrate Judge Smyser)
Defendant	:

O R D E R

NOW, this _____ day of _____, 2001, upon consideration of defendants' motion to dismiss, IT IS HEREBY ORDERED THAT the complaint is dismissed with a certification that any appeal shall be deemed frivolous, lacking in probable cause and not taken in good faith.

SYLVIA H. RAMBO
United States District Judge

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF PENNSYLVANIA

JEROME SMITH,	:	
Plaintiff	:	
	:	Civil No. 1:CV-01-1026
v.	:	
	:	(Judge Rambo)
UNITED STATES OF AMERICA,	:	(Magistrate Judge Smyser)
Defendant	:	

O R D E R

NOW, this ____ day of _____, 2001, upon consideration of defendants' motion for summary judgment, IT IS HEREBY ORDERED THAT summary judgment is entered in favor of the defendants with a certification that any appeal shall be deemed frivolous, lacking in probable cause and not taken in good faith.

SYLVIA H. RAMBO
United States District Judge